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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: E-185943

DATE: November 9, 1976

MATTER OF: Astronautics Corporation of America

DIRECT:

1. Protester failed to establish that TWX containing price reduction was received by procuring activity. In any event, acceptance of protester's offered price reduction could not have been made without also giving other offeror opportunity to revise its price.
2. Agency's determination that low offeror had ability to supply required items on time is an affirmative determination of responsibility not reviewed by this Office except under circumstances not present here.
3. Protester's allegation that price negotiations were held only with one offeror is denied where there is no evidence of such negotiations.

Astronautics Corporation of America (ACA) has protested the award of a contract to Litton Systems, Inc. (Litton) for the purchase of at least 297 Horizontal Situation Indicators (HSI's) under solicitation F33657-76-R-0047 issued by Headquarters, Aeronautical Systems Division, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio. ACA contends that the award was improper on three grounds: (1) the award was not made to the technically qualified offeror quoting the lower price; (2) Litton is unable to meet the contract's delivery requirements,; (3) although the Air Force claims to have made award on the basis of initial proposals, Litton was in fact permitted to revise its price.

On several occasions after receipt of initial proposals the Air Force requested both offerors to extend the time in which initial proposals could be accepted. The record shows that Litton simply agreed to the requested extensions. In one instance, ACA's agreement to an extension of its proposal was accompanied by a reduction in its unit price, which was never considered by the Air Force in its evaluation of proposals. (There is no indication that ACA was advised of this at the time.) The Air Force reports

that both offerors orally agreed to its last telephonic request for an extension, during which no mention was made of any change in price.

ACA alleges that it confirmed the oral extension of its offer by a TWX which included a further price reduction, the effect of which would have been to make ACA low. There is a factual disagreement as to whether that message was ever received by the procuring activity. ACA's regional representative states that he saw the message in the buyer's "in" box prior to award. However, the Air Force says it has no record of ever receiving the message.

The protester has the burden of affirmatively proving his case. We do not believe that burden has been met where conflicting statements of the protester and the contracting agency constitute the only evidence. We therefore are unable to conclude that the procuring agency received the protester's TWX.

The protester appears to assume that the Air Force simply could have accepted the price reduction offered in the message whose receipt has not been established. However, we should point out that the Air Force could not have accepted the price reduction without also giving Litton an opportunity to revise its price. We have held that the offer and acceptance of a price reduction in conjunction with a request for extension of offers constituted discussions, which must be conducted with all offerors within a competitive range. See Corbetta Construction Company of Illinois, Inc., 55 Comp. Gen. 201, 217-19 (1975), 75-2 CPD 144, affirmed on reconsideration, B-182979, April 9, 1976, 76-1 CPD 240. Therefore, there is no certainty that ACA would have been the low offeror had the Air Force decided to consider price revisions rather than make award on the basis of initial proposals which it regarded as fair and reasonable.

Litton's ability to meet the solicitation's delivery schedule is a matter going to Litton's responsibility as a prospective contractor. Because the Air Force has determined that Litton is responsible, and because there has been no allegation or evidence of fraudulent conduct on the part of the Air Force, ACA's protest on the second ground is dismissed. Keco Industries, Inc., B-187408, October 5, 1976, 76-2 CPD ____.

B-1859(3)

ACA's third contention is that price negotiations were conducted with Litton but not with ACA. ACA has presented no evidence of this fact, and the supplementary report supplied by the Air Force shows that the initial price offered by Litton is the same as the contract price. From the above, we see no evidence that negotiations were held with Litton, therefore, the protest on that ground is denied.

Acting

[Signature]
Comptroller General
of the United States